

USDC SDNY
DOCUMENT
FILED OR ORIGINALLY FILED
DOC #:
DATE FILED: 8-26-13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re REFCO INC. SECURITIES : 07 MDL 1902 (JSR)
LITIGATION :
-----x
-----x
KENNETH M. KRYS, et al., :
Plaintiffs, :
: 08 Civ. 3065 (JSR)
: 08 Civ. 3086 (JSR)
-v- :
CHRISTOPHER SUGRUE, et al., :
Defendants. :
-----x

SUPPLEMENTAL
MEMORANDUM
ORDER

JED S. RAKOFF, U.S.D.J.

On July 28, 2012, the Court issued a Memorandum Order reaffirming its earlier "bottom-line" Order of July 17, 2012, dismissing with prejudice plaintiffs' claims against Liberty Corner Capital Strategies, LLC; Ingram Micro, Inc.; CIM Ventures, Inc.; and William T. Piggot in the above-captioned case. On October 27, 2012, at the joint request of both sides, the Court filed an Order, pursuant to Fed. R. Civ. P. 54(b), determining that there was no just reason to delay the entry of final judgment. The parties then briefed an appeal by plaintiffs to the Second Circuit, see Case No. 08 Civ. 3065 (JSR), ECF No. 668; but on August 2, 2013, the Second Circuit remanded the case, pursuant to United States v. Jacobson, 15 F.3d 19 (2d Cir. 1994), directing the Court "to supplement the record with a reasoned, even if brief, explanation for why an immediate appeal of the dismissal of the claims against appellees is appropriate." See Case No. 08 Civ. 3065 (JSR), ECF No. 849.

The Court apologizes for not stating its reasons in its Order of October 27, 2012, since it is mindful that the possibility of piecemeal appeals imposes a potential burden on the appellate court. In granting the parties' joint request for the Rule 54(b) judgment, however, the Court, pursuant to Supreme Court precedent, took account of such factors as "whether the claims under review are separable from the others remaining to be adjudicated and whether the nature of the claims already determined is such that no appellate court would have to decide the same issues more than once," Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980), and determined that these requirements were met. Specifically, the claim brought against the four aforementioned defendants -- viz., that these defendants' borrowing from one Refco entity and lending to another Refco entity rendered them liable as aiders and abettors of the Refco fraud -- is unique to them.¹ As for the Refco matters writ large, they are mostly finally resolved, largely through settlements, and, in any event, no remaining

¹ While this special claim was also brought against certain other defendants, none is still in the case. Specifically, the comparable claims against Coast Asset Management, LLC, Christopher Pettit, CS Land Management, LLC were settled and dismissed on December 14, 2009; the similar claims against BAWAG and EMF Financial Products LLC, EMF Core Fund Ltd., Delta Flyer Fund LLC and Eric M. Flanagan were dismissed with prejudice for lack of standing by Order dated May 4, 2011; and the only other defendants facing similar claims -- Beckenham Trading Co., Inc. and Andrew Krieger -- have not participated in the case since their counsel withdrew on December 17, 2009, cannot be located, and appear to have abandoned any defense of the case.

potential appeal to the Second Circuit from any aspect of the case seems likely to present issues that are not almost entirely distinct from those relating to the instant defendants.

Plaintiffs are directed to file a copy of this Supplemental Order with the Clerk of the Court of the Second Circuit Court of Appeals, with the request that she forward it to the panel that issued the aforementioned remand Order.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
August 22, 2013